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August 23, 2002

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The Honorable John D. Ashcroft
Attorney General of the United States
U.S. Department of Justice
10th Street and Constitution Avenue, NW
Washington, DC 20510

Dear Mr. Attorney General:

I write to express my grave concerns about the May 17, 2002 memorandum opinion of the Foreign Intelligence Surveillance Court. This memorandum not only indicates that your Justice Department has adopted legal positions contrary to legal authority, but also that your Department may have given misleading information to Congress.

In your Department's July 26th response to a June 13th letter from Chairman Sensenbrenner and me, your Department noted the following question and responded as follows:

"14. Since enactment of the Act, how many FISA surveillance order applications certifying under section 218 of the Act that "a significant purpose" of the surveillance was the collection of foreign intelligence information could not have been certified, pursuant to prior law, that "the purpose" was the collection of foreign intelligence information?

...The "primary purpose" standard has had its principal impact with respect to the government's certification of purpose concerning the use of FISA itself, but rather in the [FISA court's] tolerance of increased law enforcement investigations in which FISA is being used."

At a minimum, I would state that this answer was not directly responsive to our question. In addition, given what we now know about the FISA court's dealings with the Department, I am concerned that your response may have created the impression that the FISA court had ruled in favor of the Department's increased use of FISA for law enforcement purposes. This would be misleading. This ruling, decided months ago, made clear that the FISA court is contemptuous of the Department's continuing attempts to expand law enforcement's ability to use spy tactics in

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criminal investigations. I am troubled that your Department made this assertion in light of this ruling.

This is no trivial concern. What your Department suggested, and the court properly rejected, was the idea that – absent probable cause that a crime has been committed – a law enforcement official could direct our nation's spies to conduct surveillance on someone they claim is a criminal suspect. Not only does that run counter to our nation's legal traditions, but it is also arguably unconstitutional and could result in a number of cases being thrown out of court as valuable evidence is suppressed. For a Department that purports to be so concerned about apprehending terrorists, this reckless disregard of criminal procedure in a manner that could jeopardize prosecutions is especially troubling.

In addition to the misleading nature of your response, your Department's answer to our bipartisan letter repeatedly asserts that information is "classified" that would have cast light on this problem had it been revealed. It is worth noting that, completely counter to precedent, the letter fails to cite the reason for classifying this information and the requests involved are simply for the NUMBER of times various authorities have been used. I am now concerned that this was an improper invocation of a privilege designed to impede this Committee from ascertaining the truth and conducting constitutional oversight.

Mr. Attorney General, it is your responsibility to ensure that your Department does not attempt to distort existing law and that your representatives provide accurate information to Congress. I urge you to provide a complete accounting of this matter, including complete answers to our questions regarding your implementation of the Patriot Act, to the Judiciary Committees by the close of business on August 28, 2002. To the extent you deem any of the answers to be classified, you may direct your answers to those members of the Judiciary staff that have security clearance.

Sincerely,


John Conyers, Jr.
Ranking Member

cc: Honorable F. James Sensenbrenner, Jr., Chairman